



2024:DHC:7596



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 27.09.2024
Judgment pronounced on: 03.10.2024

+ **RFA 150/2020****M/S JAINSONS LIGHTS (PVT) LTD****.....Appellant**Through: **Mr. Shailender Negi, Advocate**

versus

ASHRAF**.....Respondent**Through: **Mr. Arun Poomulli, Advocate****CORAM:****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J. :**

1. This appeal brought under Section 96 of the Code of Civil Procedure assails the judgment and decree dated 18.09.2019 whereby the money recovery suit filed by the appellant was dismissed by the court of learned Additional District Judge, Central, Tis Hazari Courts, Delhi. Upon service of notice, the respondent entered appearance through counsel. I heard learned counsel for both sides and examined the digitized record of the trial court.

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2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The appellant, a private limited company, filed a suit for recovery of Rs. 3,08,343/- against the present respondent, pleading that both parties were engaged in the business of fancy lights, wherein since the year 2012-13 the present respondent used to purchase lights from the appellant; that the appellant had been raising bills for the material purchased by the respondent against oral orders; that the respondent had been taking delivery of the purchased goods either directly or through transporters; that the appellant in regular course of business was maintaining a running account in respect of business transactions between the parties; that the respondent had been making payments by way of cheques delivered in Delhi; that as on 01.01.2015, the respondent owed a sum of Rs. 3,08,343/- to the appellant towards consideration of the material already sold and supplied since 30.12.2013, so the appellant started refusing to supply further material till payment of outstanding dues was made by the respondent; that when despite repeated requests by way of telephonic communications and personal visits of representatives of the appellant, the outstanding liability was not discharged by the respondent, a demand notice through counsel was served by the appellant on the respondent, calling upon the latter to pay Rs. 3,08,343/- with interest at a rate of 12% per annum with effect from 01.01.2015, but despite service of notice, the respondent failed to pay the outstanding amount; that since business of the appellant is in Delhi and the

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goods were purchased by way of invoices raised in Delhi, territorial jurisdiction to adjudicate this dispute vested in the Delhi Courts.

2.2 The respondent contested the suit by way of written statement, in which he denied the contents of the plaint and pleaded that he was carrying on his business at Ernakulam, Kerala and he had no business transaction with the appellant; that he never visited Delhi nor ever executed any agreement with the appellant in Delhi nor placed any purchase orders on the appellant in Delhi nor made any payment to the appellant in Delhi nor he made any endorsement of acceptance on any of the bills raised by the appellant; that the bills raised by the appellant are not genuine and were fraudulently created by the appellant for this suit; that the plaint was not signed and instituted by a competent person; that he had business transaction only with M/s Jainsons Electronics, the sister concern of the appellant and all those transactions occurred only in Kochi, Kerala.

2.3 The appellant filed a replication, thereby denying the contents of the written statement and reaffirming the plaint contents. In the replication, the appellant pleaded that all original bills are in possession of the respondent, as he had received the same alongwith the goods from the transporter.

2.4 On the basis of above pleadings, the learned trial court framed the following issues:

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- “1. Whether this Court has no territorial jurisdiction to entertain the present suit as per preliminary objection no.3? OPD*
- 2. Whether the suit has not been filed and verified by duly authorised and competent person, if so, to what effect? OPD*
- 3. Whether suit is barred by 69 (2) of Partnership Act? OPD*
- 4. Whether suit is devoid of cause of action and based on false facts? OPD*
- 5. Whether plaintiff is entitled for decreed of a sum of Rs. 3,08,343/- as claimed for ? OPP*
- 6. Whether plaintiff is entitled for pendente lite and future interest? If so, at what rate and for what period? OPD*
- 7. Relief”*

2.5 In support of its case, the appellant company examined the plaintiff signatory as its solitary witness PW1, who deposed on oath the abovementioned contents of his pleadings and placed on record the relevant documents as Ex. PW1/1 to Ex. PW1/9. In his cross examination, the said solitary witness PW1 of the appellant deposed that he had no concern with Jainsons Electronics and had no knowledge about the civil suit filed by Jainsons Electronics against the respondent; that he had no document to show placing of any order by the respondent in Delhi; that he could not produce even a visiting card of the respondent; that the ledger account filed by him was prepared by the accountant; that none of the bills/invoices placed on record of this suit bears signatures of the respondent; that the statement of accounts placed on record does not bear even his own signatures; that the courier receipt Ex. PW1/8 does not bear complete address of the respondent; that he did not remember as to whether the cheques were personally handed over to him or delivered to him by the courier; that he could not produce any contract executed between the parties



for sale of goods; that he could not recollect as to how many times the respondent had personally collected goods from his shop; and that he had no document reflecting personal acknowledgment of receipt of goods in Delhi by the respondent. PW1 denied the case of defendant suggested in the cross examination.

2.6 No other evidence was adduced on behalf of the appellant.

2.7 The respondent also opted not lead any evidence.

2.8 On the basis of above pleadings and evidence, the learned trial court decided the issues no. 2 & 3 in favour of the appellant and the remaining issues in favour of the respondent. Consequently, the suit of the appellant was dismissed.

3. Hence, the present appeal by the unsuccessful plaintiff.

4. During final arguments, both sides took me through trial court record and the relevant judicial pronouncements.

4.1 Learned counsel for appellant argued that the learned trial court erred in ignoring the vital evidence on record in the form of the ledger account Ex. PW1/4 and invoices Ex. PW1/3 (colly) which clearly establish liability of the respondent to pay the outstanding amount. Learned counsel for appellant

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also referred to the courier receipt at *pdf* page 149 of the trial court record, claiming the same to be a part of Ex. PW1/3 (colly) and contended that the same establishes delivery of goods from Delhi to the respondent in Ernakulam, Kerala. Besides, learned counsel for appellant also referred to various invoices forming part of PW1/3(colly) and claimed the same to be the evidence of delivery of the goods by the appellant to the respondent. In support of his arguments, learned counsel for appellant placed reliance on the judgments in the cases titled ***J.C. Enterprises (Regd) vs Ranganatha Enterprises***, 2011 (122) DRJ 34; ***M/s Harit Polytech Pvt. Ltd. vs M/s Colt Cables Pvt. Ltd.***, 2016:DHC:6685; ***Mrs. Shradha Wassan & Ors. vs Mr. Anil Goel & Anr.***, 2009:DHC:1916; and ***Vidyadhar vs Manik Rao & Anr.***, (1999) 1 SCR 1168.

4.2 On the other hand, learned counsel for respondent supported the impugned judgment and contended that the appeal is totally devoid of merits. Learned counsel for respondent contended that since the appellant had completely failed to prove its case, there was no occasion for the respondent to lead any evidence. It was argued on behalf of respondent that the judicial precedents relied upon by the learned counsel for appellant are completely distinguishable from the present case.

5. The learned trial court found it appropriate to examine the issues no. 1 and 4 together. I am in agreement with that view keeping in mind the intertwined nature of these issues, insofar as according to the appellant the

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courts in Delhi have territorial jurisdiction to adjudicate this dispute because the goods were delivered from Delhi and payments also were made and were to be made in Delhi, while according to the respondent the courts in Delhi have no territorial jurisdiction to adjudicate this dispute because the respondent is a resident of and working for gain in Ernakulam Kerala and had no business transaction at all with the appellant, be in Delhi or otherwise.

6. In the backdrop of above rival pleadings and the issues, it was incumbent upon the appellant to adduce some cogent evidence in order to establish that the parties were engaged in business transactions whereby the appellant from Delhi supplied goods to the respondent in Ernakulam, Kerala and the latter paid the consideration to the former in Delhi.

7. In that regard, the appellant relies upon the copies of bills/invoices Ex. PW1/3 (colly) and the copy of ledger account Ex. PW1/4. Admittedly, neither the alleged bills/invoices nor the alleged ledger account bear endorsement of the respondent to show that he acknowledged correctness of the same and/or that he had received any goods from the appellant. All the said documents are appellant's own documents. Merely on the basis of those documents, it cannot be said even on preponderance of possibilities that appellant had supplied any goods to the respondent, much less from Delhi to Ernakulam, Kerala.

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8. With the help of a courier receipt forming part of Ex. PW1/3 (colly), placed at *pdf* page 149 of the digitized record of trial court, learned counsel for appellant argued that in view of Section 39 of the Sale of Goods Act, once the appellant had handed over the goods to the courier company, it ceased to have control over the same and the said document clearly shows delivery of goods to the respondent from Delhi. In this regard, learned counsel for appellant places reliance on the judgment in the case of **J.C. Enterprises** (supra). But this argument sounds overstretched. For, the said courier receipt nowhere mentions the complete address of the respondent and does not establish as to what was dispatched through the said assignment. The appellant ought to have adduced some cogent evidence through records of the courier company as regards the goods dispatched and the complete address of the assignee as well as proof of delivery. So, this document fails to help the appellant.

9. The judgments in the cases of **Harit Polytech** (supra) and **Shradha Wassan** (supra) were cited by learned counsel for appellant to say that the place where the sale consideration was required to be paid would afford territorial jurisdiction to the concerned courts and since the payments were to be made in Delhi, the courts in Delhi have territorial jurisdiction. But this argument must fail because there is no evidence to show any business transaction between the parties, much less any delivery of goods by the appellant for which consideration remained payable by the respondent.

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10. As observed above, PW1 the solitary witness of appellant categorically admitted in his cross examination that there was no document to show any order placed by the respondent in Delhi and that none of the bills/invoices or the ledger account bear endorsement of the respondent. In his rejoinder, the appellant had specifically pleaded that the original bills are in possession of the respondent. In such situation, the appellant ought to have served notice under Order XII Rule 8 CPC and/or an application under Order XI CPC for discovery and inspection of the original record, besides interrogatories. But the appellant opted not to do the same.

11. I am unable to find substance in the argument of appellant side that since the respondent did not lead any evidence, case of the appellant has to be deemed proved. The judgment in the case of **Vidyadhar** (supra) cited on behalf of the appellant in this regard is completely distinguishable from the present case insofar as in the present case, it is not a situation where the plaintiff proved his case and the defendant had pleaded challenge to its validity but did not step into the box.

12. In the case of **Rangammal vs Kuppaswami & Anr.** (2011) 12 SCC 220, the Hon'ble Supreme Court examined the provision under Section 101 of the Evidence Act and held thus:

21. Section 101 of the Evidence Act, 1872 defines "burden of proof" which clearly lays down that:

"101. Burden of proof.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts



which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

Thus, the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

.....

*31. Application of Section 101 of the Evidence Act, 1872 thus came up for discussion in **Subhra Mukherjee** case [(2000) 3 SCC 312 : AIR 2000 SC 1203] and while discussing the law on the burden of proof in the context of dealing with the allegation of sham and bogus transaction, it was held that the party which makes the allegation must prove it. But the Court was further pleased to hold, wherein the question before the Court was “whether the transaction in question was a bona fide and genuine one” so that the party/plaintiff relying on the transaction had to first of all prove its genuineness and only thereafter would the defendant be required to discharge the burden in order to dislodge such proof and establish that the transaction was sham and fictitious. ...”.*

(emphasis supplied)

13. In the present case, when the appellant failed to adduce any cogent evidence to prove any business transaction between the parties, there was no need for the respondent to lead any evidence. Irrespective of the wordings of the issues framed in the negative sense and the onus to prove negative placed by the trial court, it was for the appellant to prove that there were business transactions between the parties, whereunder order for supply of goods was made in Delhi by the respondent and the goods were

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supplied from Delhi to the respondent in Ernakulam, Kerala against the consideration to be paid in Delhi. Since the appellant failed to adduce any reliable evidence on these lines, there was no necessity for the respondent to prove negative on these aspects. It could not have been proved by the appellant that there were no business transactions between the parties and no goods were supplied to him.

14. In view of above discussion, I am unable to find any infirmity in the impugned judgment and decree, so the same are upheld and the appeal is dismissed.

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**GIRISH KATHPALIA
(JUDGE)**

OCTOBER 03, 2024/as